

**PROPOSED ORDER ESTABLISHING THE NOMINATING COMMITTEE
OF THE HAWAI'I SUPREME COURT**

IT IS HEREBY ORDERED that, with the entry of this order, the Nominating Committee of the Hawai'i Supreme Court is established. The Nominating Committee's purpose is to propose nominees to fill vacancies hereafter occurring on the boards established pursuant to Rules 1, 2, 10, and 16, of the Rules of the Supreme Court of the State of Hawai'i. The Nominating Committee shall consist of four (4) members selected by the Board of Directors of the Hawai'i State Bar, one (1) member selected by the Board of Examiners, one (1) member selected by the Disciplinary Board of the Hawai'i Supreme Court, one (1) member selected by the Trustees of the Lawyers' Fund for Client Protection, and one (1) member selected by the Attorneys and Judges Assistance Program Board. The person selected to serve on the Nominating Committee may, but need not, be a member of the board of the appointing body. Each member of the Nominating Committee shall serve at the pleasure of the appointing body. The Nominating Committee may establish appropriate nomination policies for the solicitation, screening, and selection of potential nominees.

The Nominating Committee shall submit at least one nominee to fill any vacancy. Any member of the Nominating Committee may submit a minority recommendation to the supreme court. The supreme court reserves the rights to select a minority recommendation or to reject any nominee and require the Nominating Committee to propose another nominee.

The Nominating Committee shall elect from among its members a Chair and a Vice-Chair. Five members shall constitute a quorum to do business.

**PROPOSED ORDER AMENDING THE RULES OF THE SUPREME COURT
OF THE STATE OF HAWAII**

(deleted material is bold bracketed, new material is underlined):

1. Subsection (a) of Rule 1.2 is amended as follows:

1.2. Board of Examiners.

(a) Composition and Reimbursements. Members of the Board shall be appointed for staggered three-year terms by the Supreme Court from nominations submitted by the [Board of Directors of the Hawai'i State Bar] Nominating Committee of the Hawai'i Supreme Court. Members of the Board shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

2. Subsections (a), (e)(7) and (e)(8) of Rule 2.4 are amended as follows:

2.4. Disciplinary Board.

(a) The supreme court shall appoint a board to be known as the "Disciplinary Board of the Hawai'i Supreme Court" (hereinafter referred to as the "Board") which shall consist of eighteen members, each of whom shall be nominated and appointed separately. All appointments shall be made from a list of nominees submitted by the [governing Board of the Hawai'i Bar] Nominating Committee of the Hawai'i Supreme Court. [Members of the Bar governing Board may, but need not, also be members of the Disciplinary Board.] The Disciplinary Board shall appoint a Chairperson and Vice-Chairperson from amongst its members.

* * *

(e) The Board shall exercise the powers and perform the duties conferred and imposed upon it by these Disciplinary Rules, including the power and duty:

* * *

(7) (i) To develop [in consultation with the Board of Directors of the Hawai'i State Bar] an annual budget for [the operation] operating [of] the Office of Disciplinary Counsel and performing the functions of the Board, to develop appropriate financial policies for managing of all funds received by the Board, and to propose an annual fee;

(ii) to submit, no later than October 1 each year, the developed budget, financial policies, and fee structure to the Hawai'i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai'i State Bar prior to submission to the supreme court;

(iii) to receive written comments, if any, from the Hawai'i State Bar regarding the budget, financial policies, and fee structure;

(iv) to reply in a timely fashion in writing to any written comments from the Hawai'i State Bar regarding section (iii), provided the comments were received no later than November 1; and

(v) to submit, no later than November 15 each year, the budget, financial policies, and annual fee along with any and all written comments received from the Hawai'i State Bar, and any replies thereto, to the supreme court for its review.

(8) To receive from the Bar all funds collected by the Bar for the [annual budget of the] Board, [; to prepare an annual budget for the expenditure of those funds; to develop appropriate financial policies for the management of such funds;] and to have exclusive control and responsibility over all financial transactions; and to develop and maintain appropriate accounting records showing the receipt and disposition of those funds, which records shall be subject to audit as directed by the supreme court.

3. Rule 2.21 is deleted, as follows:

[2.21 Administration and Finances. All matters relating to the administration and finances of the Board, including the annual budget provided for in Rule 2.4(e)(7), shall be subject to review by the Board of Directors and ultimate review and approval by the Court.]

4. Subsections (b) and (d) of Rule 10.1 are amended, as follows:

Rule 10. LAWYERS' FUND FOR CLIENT PROTECTION.

10.1. Purpose; Trustees; Administration.

* * *

(b) Appointment of Trustees. The supreme court shall appoint five trustees from nominations made by the [Board of Directors of the Hawai'i State Bar] Nominating Committee of the Hawai'i Supreme Court to administer and operate the Fund in accordance with these rules. The trustees shall consist of three lawyers and two nonlawyers appointed by the supreme court for staggered five-year terms.

* * *

(d) Rules. The trustees [working in consultation with the Board of Directors of the Hawai'i State Bar] shall adopt rules, consistent with these rules and subject to meaningful review, analysis, input, and comment by the Hawai'i State Bar and ultimate [the] approval of the supreme court, governing the administration of the Fund, the procedures for the presentation, consideration, and payment of claims, and the exercise of their investment powers.

5. Subsections (a), (b), (j), and (k) of Rule 10.4 are amended and new subsection (l) of Rule 10.4 is added, as follows:

10.4. Powers and Duties of the Trustees.

* * *

(a) The Fund shall be audited [by auditors] annually and at such other times as the [Board of Directors] supreme court shall direct. The audits shall be at the expense of the Fund. The annual audit shall be included in a report to be submitted annually by the trustees to the [Board] Hawai'i State Bar and the supreme court reviewing in detail the administration of the Fund during the preceding year;

(b) The trustees may apply to the [Board and/or the] supreme court for interpretations of these rules and of the extent of their powers and duties and for advice regarding the proper administration of the Fund;

* * *

(j) To employ and compensate consultants, counsel and employees as the trustees deem appropriate;[and]

(k) To make reimbursements for administrative expenses incurred in the administration of the Fund[.]; and

(l) (i) to develop an annual budget for operating the Fund and performing the functions of the trustees, appropriate financial policies for managing all funds received by the trustees, and proposing an annual fee;

(ii) to submit, no later than October 1 each year, the developed budget, financial policies, and fee structure to the Hawai'i State Bar to allow an opportunity for meaningful review, analysis, input, and comment by the Hawai'i State Bar prior to submission to the supreme court;

(iii) to receive written comments, if any, from the Hawai'i State Bar regarding the budget, financial policies, and fee structure;

(iv) to reply in a timely fashion in writing to any written comments from the Hawai'i State Bar regarding section (iii), provided the comments were received no later than November 1; and

(v) to submit the budget, financial policies, and annual fee along with any and all written comments received from the Hawai'i State Bar, and any replies thereto, to the supreme court for its review and approval.

6. Subsection (a) of Rule 16.2 is amended as follows:

16.2. Attorneys and Judges Assistance Program Board.

(a) The supreme court shall appoint from nominations submitted by the [Board of Directors of the Hawai'i State Bar] Nominating Committee of the Hawai'i Supreme Court a board to be known as the "Attorneys and Judges Assistance Program Board of the Hawai'i Supreme Court" ("Board") which shall consist of nine (9) members, one of whom shall be designated by the Board as chairperson. Six (6) members shall be

attorneys licensed to practice in the State of Hawai'i and three (3) members shall be judges of the State of Hawai'i.

7. Subsections (b) and (d) of Rule 17 are amended as follows:

Rule 17. THE HAWAII STATE BAR.

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(b) Purposes and Powers. The purposes of the Hawai'i State Bar shall be to aid the courts in regulating, maintaining and improving the legal profession, administration of justice and advancements in jurisprudence, in improving relations between the legal profession, the public and the various branches and instrumentalities of government in this State, and in promoting the interests of the profession in this State. The Bar shall have the power and responsibility for administering the statutes and rules of this court relating to governance of the profession (other than statutes and rules governing contempt of court), as follows: (1) The Bar shall assist this court in carrying out the functions under § 605-14, Hawai'i Revised Statutes [Unauthorized Practice of Law], Rule 1 [Admissions], [and] Rule 2 [Discipline] , and Rule 10 [Lawyers' Fund for Client Protection] [by assuming the principal administrative functions involved therein,] while preserving to this court at all times its ultimate authority over admission and discipline of attorneys licensed to practice in this State; and (2) the Bar shall assume primary responsibility for the other rules of the court and programs relating to the profession, its governance and improvement, including Rule 6 [Professional Corporations], [Rule 10 [Lawyers' Fund for Client Protection],] Rule 11 [IOLTA], and Rule 16 [Substance Abuse]. In the latter category, the Bar shall have the power and responsibility not only of administration, but also of initiation of all changes and improvements therein, subject always to the oversight of this court through amendment of this rule as provided below, and in these endeavors the Bar shall have as its goal the improvement of the practice of law and the standards of professionalism of all attorneys in this State. The constitution and bylaws and rules adopted by the Bar shall be binding on all members of the Bar in the same manner as the rules of this court.

* * *

(d) Member Registration, Assessment, Suspension and Status.

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(2) *Dues, Fees and Charges.* Each member shall pay to the Bar the following dues, fees, or charges [as determined from time to time by the Board of Directors of the Bar.]:

(i) *Hawai'i State Bar [Association] Dues.* [These are a] Annual dues as determined by the Board of Directors of the Bar [appropriate to the member's class of membership].

(ii) *Disciplinary Board Fee*. [The annual fee is structured into three classes: (a) active attorneys admitted to practice less than five years, (b) active attorneys admitted to practice five or more years, and (c) inactive attorneys. In no event shall such fee be reduced below the amounts in effect on July 1, 1989 without prior authorization of this court.] The annual fee, determined in accordance with Rule 2.4(e)(7), [Said fee] shall be paid over by the Bar at least [annually] quarterly to the Disciplinary Board[, and shall be administered and used by the Board to defray the costs of disciplinary administration and enforcement under these rules].

(iii) *Lawyers' Fund for Client Protection Fee*. [This annual fee is structured into two classes: (a) attorneys licensed to practice for less than five years on December 31 of the calendar year preceding the assessment, and (b) attorneys licensed to practice for five years or more on December 31 of the calendar year preceding the assessment.] The fee, determined in accordance with Rule 10.4(l), [Said fee] shall be [remitted to the trustees of the Lawyers' Fund for Client Protection by the Bar] paid over by the Bar at least quarterly to the Fund [and shall be administered and used by the trustees in furthering the purposes of the Fund].

(iv) *Attorneys and Judges Assistance Program Fee*. This is a flat annual fee. The Bar shall remit the proceeds of said fee to the AAP Board at least annually.

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(7) *Inactive Status*. An attorney who is in compliance with this rule, but who has retired or is no longer engaged in practice in this jurisdiction, may advise the Bar in writing that the attorney desires to assume inactive status and discontinue the practice of law in Hawai'i. Upon the filing of such notice, together with a processing fee in such amount as the Board of Directors shall determine from time to time, the attorney shall be placed on inactive status and shall no longer be eligible to practice law. An attorney on inactive status shall be carried on the rolls of the Bar in such inactive classification(s) as may be provided in the bylaws of the Bar and shall be required to pay such dues or fees, if any, as the Board of Directors of the Bar may prescribe from time to time or as the supreme court may direct in accordance with the Rules of the Supreme Court of the State of Hawai'i. The Bar shall advise the Disciplinary Board and the clerk of this court of the names of all attorneys who assume inactive status. Attorneys on inactive status shall remain subject to jurisdictions of this court, the Disciplinary Board, the Lawyers' Fund for Client Protection, the Attorneys and Judges Assistance Program and the Bar.